

UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO

IN Re:

JUAN OMAR ALVAREZ BERRIOS
AILYN YADIRA ROSARIO RESTO

XXX-XX-2967
XXX-XX-4941

DEBTOR (S)

CASE NO. 13-05014-MCF

CHAPTER 13

TRUSTEE'S MOTION TO DISMISS
FOR FAILURE TO COMPLY WITH 11 U.S.C. § 1308

TO THE HONORABLE COURT:

NOW COMES José R. Carrión, Standing Chapter 13 Trustee (hereinafter, the "Trustee"), through the undersigned attorney, and very respectfully alleges and prays:

1. The Section 341 Creditor Meeting in this case was held on **July 19, 2013**. In compliance with 11 U.S.C. § 1308 (b) (1) and after the relevant inquiry, the Trustee decided to hold the meeting open, **14** days, pending Debtor(s)' remittance of evidence of filing all applicable tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

2. Through notice filed on **August 07, 2013, docket no.12**, the Trustee closed the section 341 meeting and certified that debtor(s) has/have not provided evidence of filing the applicable tax returns in compliance with 11 U.S.C. § 1308.

3. Bankruptcy Code the sections §§ 1307(e) and 1308 provides:

On its relevant part, Section 1307(e) provides:

Upon the failure of the debtor to file a tax return under *section 1308*, **on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title**, whichever is in the best interest of the creditors and the estate.

On its relevant part, Section 1308 provides:

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under *section 341(a)*, if the debtor was required to file a tax return under **applicable non-bankruptcy law, the debtor shall** file with appropriate tax authorities **all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition**.

(b)(1) Subject to paragraph (2), if the tax returns required by subsections (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under *section 341(a)*, the trustee may hold open that meeting **for a reasonable period of time** to allow the debtor an additional period of time to file any unfiled returns. (Added emphasis).

4. In In re Cushing, 401 B.R. 528 (B.A.P. 1st Cir. 2009), the Bankruptcy Appellate Panel of the First Circuit reviewed the legislative history behind §§ 1307 and 1308 and explained that Congress enacted the statutes first *"to help state revenue agencies figure out whether they had claims against the debtor,"* and second, *"to punish debtors who were delinquent in filing tax returns, by withholding confirmation until they did so."* Cushing, 401 B.R. at 533-34. Clearly, the trustee is given discretion in § 1308 to hold open the § 341 meeting for a finite period of time to allow the debtor to file the tax returns. Id. at 538.

5. In light of the aforementioned legal requirements and the

Debtor(s)' failure to comply with the same, the Trustee respectfully requests this Honorable Court to dismiss the instant case.

WHEREFORE, the Trustee respectfully requests this Honorable Court to, **after notice and opportunity for a hearing**, pursuant to 1307(e) dismiss the instant bankruptcy case for failure to provide evidence of compliance with Section 1308 of the Bankruptcy Code.

30 DAYS NOTICE: In accordance with Local Bankruptcy Rule 9013-2(h)(2)(H), the Debtor(s), all Creditors and Parties in Interest in this case, are hereby notified that unless an opposition to this motion to dismiss is submitted in writing within **30 days** from the date appearing in the certificate of service, the Court may grant this motion, or convert the case to a Chapter 7, without a hearing.

CERTIFICATE OF SERVICE: The Chapter 13 Trustee certifies a copy of this motion has been served by regular U.S. Mail on this same date to: the DEBTOR(s) and her/his/their attorney and all Creditors and Parties in Interest to their respective addresses of record as they appear in the attached master address list to the address of record, if any are not registered CM/ECF system participants.

In San Juan, Puerto Rico this, August 07, 2013.

/s/ Jose R. Carrion

Jose R. Carrion
Chapter 13 Trustee
PO Box 9023884
San Juan, PR 00902
Tel. (787) 977-3535
Fax (787) 977-3550

13-05014-MCF

MASTER ADDRESS LIST

JOSE R. CARRION
PO BOX 9023884, OLD SAN JUAN STATION
SAN JUAN, PR 00902

MARIA DE LOS ANGELES GONZALEZ, ESQ.
US POST OFFICE & COURTHOUSE
300 RECINTO SUR ST., SUITE 109
OLD SAN JUAN, PR 00901

JUAN O CALDERON LITHGOW*
PO BOX 1710
VEGA BAJA, PR 00694-1710

DEPARTMENT OF TREASURY
PO BOX 9024140
SAN JUAN, PR 00902

UNEMPLOYMENT INSURANCE
PUERTO RICO DEPT OF LABOR
12 FLOOR 505 MUNOZ RIVERA AVE.
SAN JUAN, PR 00918

JUAN OMAR ALVAREZ BERRIOS
HC-01 BOX 5301
CIALES, PR 00638

BANCO SANTANDER DE PR
PO BOX 362589
SAN JUAN, PR 00936-2589

FIRST BANK
PO BOX 13817
SANTURCE STATION
SAN JUAN, PR 00908-3817

CHRYSLER FINANCIAL
PO BOX 195286
SAN JUAN, PR 00919

JUAN O CALDERON LITHGOW*
PO BOX 1710
VEGA BAJA, PR 00694-1710

PUERTO RICO TELEPHONE COMPANY
PO BOX 70239
SAN JUAN, PR 00936-8239

AMERICAN EXPRESS
PO BOX 3001
MALVERN, PA 19355-0701

NCO FINANCIAL SYSTEMS INC
PO BOX 192478
SAN JUAN, PR 00919-2478

ORIENTAL BANK & TRUST
PO BOX 195115
SAN JUAN, PR 00919-5115

POPULAR AUTO
PO BOX 15011
SAN JUAN, PR 00902-8511

STATE INSURANCE FUND CORP
C/O ALEJANDRO SUAREZ CABRERA
PO BOX 365028
SAN JUAN, PR 00936-5028

FONDO DEL SEGURO DEL ESTADO
PO BOX 365028
SAN JUAN, PR 00936-5028

PR ACQUISITIONS LLC
PO BOX 194499
SAN JUAN, PR 00919-4499

DIRECT TV
PO BOX 71413
SAN JUAN, PR 00936-8513

MCS PLAN MEDICO
PO BOX 193310
SAN JUAN, PR 00919

FIRST BANK
PO BOX 11865
SAN JUAN, PR 00910-3865

LVNV FUNDING LLC
PO BOX 10497
GREENVILLE, SC 29603

OPERATING PARTNERS CO INC
PO BOX 194499
SAN JUAN, PR 00919

PR ACQUISITIONS LLC
PO BOX 194499
SAN JUAN PR 00919-4499
, 00000

FIRST BANK
PO BOX 15019
WILMINGTON, DE 19886-5019

JUAN OMAR ALVAREZ BERRIOS
HC-01 BOX 5301
CIALES, PR 00638

POPULAR AUTO
C/O VERONICA DURAN CASTILLO, ESQ
PO BOX 366818
SAN JUAN, PR 00936-6818

AILYN YADIRA ROSARIO RESTO
, 00000

DIVERSIFIED CONSULTANTS
PO BOX 551268
JACKSONVILLE, FL 32255

DEPARTAMENTO HOVS135
PO BOX 47455
JACKSONVILLE FL 32247
, 00000

FIRSTSOURCE
PO BOX 628
BUFFALO, NY 14240-0628

ENHANCED REVOCERY
PO BOX 1259 DEP 98696
OAKS PA 19456
, 00000

POPULAR AUTO
BANKRUPTCY DEPARTMENT
GPO BOX 366818
SAN JUAN, PR 00936

EQUIPMENT DEPOT INC
PO NOC 296
NORWELL MA 02061-0296
, 00000

BANK OF AMERICA
PO BOX 982235
EL PASO, TX 79998-2235

LEADING EDGE RECOV
5440 N CUMBERLAND AV SUITE 300
CHICAGO IL 60656-1490
, 00000

CINGULAR
5407 ANDREWS HIGHWAY
MIDLAND, TX 79706

MCS
PO BOX 9023547
SAN JUAN PR 00902-3547
, 00000

FIA CARD SERVICES
PO BOX 982236
EL PASO TX 79998-2236
, 00000

SOUTHWEST CREDIT SYSTEM
4120 INT PARKWAY SUITE 1100
CARROLLTON TX 75007-1958
, 00000

AT&T MOBILITY PUERTO RICO
AT&T SERVICES INC
KAREN A CAVAGNARO
ONE AT&T WAY ROOM 3A 231
BEDMINSTER, NJ 07921

L & F STATION
PO BOX 617
CIALES, PR 00638

DEPARTMENT OF TREASURY
PRIORITY CLAIMS
235 AVE ARTERIAL HOSTOS
SAN JUAN, PR 00918-1454

FIA CARD
PO BOX 982236
EL PASO, TX 79998-2236

UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO

IN RE:
JUAN OMAR ALVAREZ BERRIOS
AILYN YADIRA ROSARIO RESTO

DEBTOR (S)

CASE NO. 13-05014-MCF

CHAPTER 13

AFFIDAVIT FOR DEFAULT JUDGEMENT
PURSUANT TO SECTION 201(b) (4)
OF THE SERVICEMEMBERS CIVIL RELIEF ACT OF 2003

I , Andres Manzano , clerk for the Chapter 13 & 12 Trustee's Office,
declare under penalty of perjury, the following:

That according to the enclosed certification, provided by the Department of Defense Manpower Data Center (DMDC), the Debtor(s) is (are) not in active duty or under call to active duty as a member(s) of the Army, Navy or Air Forces of the United States of America; the National Guard; the Public Health Service or the National Oceanic and Atmospheric Administration.

To certify the above statement I sign this affidavit,

In San Juan, Puerto Rico, August 07, 2013.





Status Report Pursuant to Servicemembers Civil Relief Act

Last Name: ROSARIO RESTO

First Name: AILYN

Middle Name: YADIRA

Active Duty Status As Of: Aug-07-2013

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty. HOWEVER, WITHOUT A SOCIAL SECURITY NUMBER, THE DEPARTMENT OF DEFENSE MANPOWER DATA CENTER CANNOT AUTHORITATIVELY ASSERT THAT THIS IS THE SAME INDIVIDUAL THAT YOUR QUERY REFERS TO. NAME AND DATE OF BIRTH ALONE DO NOT UNIQUELY IDENTIFY AN INDIVIDUAL.

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
 Department of Defense - Manpower Data Center
 4800 Mark Center Drive, Suite 04E25
 Arlington, VA 22350

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

Certificate ID: M47AL9D0I0428A0



Status Report Pursuant to Servicemembers Civil Relief Act

Last Name: ALVAREZ BERRIOS

First Name: JUAN

Middle Name: OMAR

Active Duty Status As Of: Aug-07-2013

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty. HOWEVER, WITHOUT A SOCIAL SECURITY NUMBER, THE DEPARTMENT OF DEFENSE MANPOWER DATA CENTER CANNOT AUTHORITATIVELY ASSERT THAT THIS IS THE SAME INDIVIDUAL THAT YOUR QUERY REFERS TO. NAME AND DATE OF BIRTH ALONE DO NOT UNIQUELY IDENTIFY AN INDIVIDUAL.

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
 Department of Defense - Manpower Data Center
 4800 Mark Center Drive, Suite 04E25
 Arlington, VA 22350

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

Certificate ID: O4A869F03042N80